

Michael Cryan (SBN 249507)  
Franjo M. Dolenac (SBN 259036)  
**ARENT FOX LLP**  
555 West Fifth Street, 48th Floor  
Los Angeles, CA 90013  
Telephone: 213.629.7400  
Facsimile: 213.629.7401  
[cryan.michael@arentfox.com](mailto:cryan.michael@arentfox.com)  
[franjo.dolenac@arentfox.com](mailto:franjo.dolenac@arentfox.com)

Attorneys for Plaintiffs  
THE DUFFY 2004 LLC  
and THE TULL 2006 LLC

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

THE DUFFY 2004 LLC and THE  
TULL 2006 LLC,

## Plaintiffs,

V.

# AXA EQUITABLE LIFE INSURANCE COMPANY.

**Defendant.**

**Case No.**

## **COMPLAINT**

## JURY TRIAL DEMANDED

1 Plaintiffs, the Duffy 2005 LLC and the Tull 2006 LLC, (collectively,  
 2 “Plaintiffs”), by and through their attorneys, file this complaint against Defendant  
 3 AXA Equitable Life Insurance Company (“AXA” or “Defendant”), and alleges as  
 4 follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs bring this action seeking compensatory and punitive  
 7 damages, equitable relief, and attorneys’ fees based on AXA’s unlawful increasing  
 8 of the cost of insurance (sometimes referred to herein as “COI”) rates on a targeted  
 9 group of its in-force Athena Universal Life II (“AUL II”) insurance policies (the  
 10 “Policies”). This targeted group (the “Discriminated Group”), which includes  
 11 Plaintiffs, consists of policyholders who own AUL II policies that (a) were issued  
 12 on insureds who were 70 years old or older (issue age); and (b) have a face amount  
 13 of \$1,000,000 or more. By raising cost of insurance rates without a proper basis and  
 14 only on the Discriminated Group, AXA has breached the express and implied terms  
 15 of the Policies, not to mention violated laws prohibiting unlawful rate  
 16 discrimination and unlawful, misleading, and unfair practices in connection with  
 17 the marketing, selling, and administering of life insurance.

18 2. The claims made by Plaintiffs here are virtually identical to the claim  
 19 made by another plaintiff before this court and the action, EFG Bank AG v. AXA  
 20 Equitable Life Insurance Company, 2:16-CV-08103 (DSF). The claims by  
 21 Plaintiffs herein, as well as EFG Bank there, are based on the same COI increase  
 22 and premised on the same breach of contract and violation of law.

23 3. Where applicable, we have asserted the same allegations in this  
 24 complaint as made by EFG for ease of reference and for issues of proof hereafter.  
 25 We have not included all of the preliminary, factual pleadings that are set forth in  
 26 great detail in the EFG complaint as those are not necessary to state the causes of  
 27 action here, but we refer to that complaint for factual reference.

28

1       4. Although universal life insurance permits an insurer to adjust the cost  
 2 of insurance rates (by increasing or decreasing the cost of insurance rates), the AUL  
 3 II Policies restrict AXA's ability to change cost of insurance rates in two important  
 4 ways. First, AXA may only change cost of insurance rates based on "reasonable  
 5 assumptions as to expenses, mortality, policy and contract claims, taxes, investment  
 6 income, and lapses." Second, any change in cost of insurance rates must "be on a  
 7 basis that is equitable to all policyholders of a given class."

8       5. The most important assumption in life insurance is mortality. Yet it is  
 9 well-known in the life insurance industry that since AXA began issuing the Policies  
 10 several years ago, in 2004, mortality has *improved*, not *worsened*. This  
 11 improvement in mortality has resulted in new life insurance mortality tables that  
 12 would, if anything, support a *decrease*, not increase, in cost of insurance rates.  
 13 Despite this, AXA has *increased* cost of insurance rates, and it has done so by  
 14 substantial amounts, in blatant breach of the Policies' express and implied terms  
 15 and conditions.

16       6. Furthermore, the Policies state that any change in cost of insurance  
 17 rates "will be on a basis that is equitable to all policyholders of a given class." But  
 18 instead of implementing a rate increase that is equitable to policyholders in each  
 19 class, AXA identified a new group of policyholders to be the target of its rate  
 20 increase. That group is the Discriminated Group and consists solely of  
 21 policyholders who own policies with issue ages of 70 and above and face amounts  
 22 of \$1,000,000 and above. Although AXA now refers to this group as a "class,"  
 23 upon information and belief, this so-called "class" did not exist at the time AXA  
 24 designed the Policies and AXA only created it in a brazen attempt to circumvent the  
 25 Policies' requirement that any rate increase be on a basis that is equitable to all  
 26 policyholders of a given glass. In other words, knowing it could not treat  
 27 policyholders within a class differently, AXA attempted to accomplish this result  
 28 by simply redefining the classes themselves.

1        7. AXA also has attempted to justify its rate increase by claiming that  
2 low interest rates have resulted in lower than expected investment income for AXA.  
3 But even if this were true, low interest rates would impact all AUL II Policies, not  
4 just those with issue ages of 70 and above and face amounts of \$1,000,000 and  
5 above, and there is no logical or actuarially-based reason for singling out these  
6 policyholders for a rate increase. Thus, it is apparent that AXA has targeted the  
7 Discriminated Group for reasons other than mere changes to its expectations of  
8 investment income.

9        8. Moreover, by drastically raising cost of insurance rates, it is apparent  
10      that AXA seeks to force Plaintiffs and other members of the Discriminated Group  
11      either to (a) pay exorbitant premiums that AXA knows would no longer justify the  
12      ultimate death benefits, or (b) lapse or surrender their policies and forfeit the  
13      premiums they have paid to date, thereby depriving policyholders of the benefits of  
14      their policies. AXA, in turn, will make a huge profit – either through higher  
15      premium payments or by eliminating a large group of policies (through lapses or  
16      surrenders) and keeping the vast majority of the premiums that have been paid to  
17      date on them. Indeed, AXA stated in SEC filings from 2015 that it expected the  
18      cost of insurance rate increases on this subgroup of AUL II policyholders to result  
19      in a \$46 million increase to net earnings in 2015 alone.

20        9. AXA's misconduct, as described more fully herein, constitutes not  
21 only express breaches of Plaintiff's policies, but also breaches of the implied and  
22 fair dealing and unlawful, unfair, and deceptive business practices. Plaintiff  
23 therefore seeks compensatory and punitive damages, as well as equitable relief and  
24 attorneys' fees.

## THE PARTIES

26           10. Each plaintiff is a limited liability corporation organized under the  
27 laws of the State of Washington and the managing member of each is the same  
28 entity, a separate Washington LLC with its principal place of business in California.

1 The policies currently owned by Plaintiffs were issued in the state of California to  
 2 policy owners who resided in California at the time of issue. All of the individual  
 3 members of both Plaintiffs, and of the LLC members, are residents of California or  
 4 Colorado.

5       11. Upon information and belief, Defendant AXA Equitable Life  
 6 Insurance Company is a New York corporation with its principal place of business  
 7 in New York, New York, and AXA is authorized to do business in the State of  
 8 California and regularly conducts its business in the State of California, including  
 9 within this judicial district.

#### **JURISDICTION AND VENUE**

10       12. This Court has subject matter jurisdiction under 28 U.S.C.  
 11 § 1332(a)(2) because the action involves parties of diverse citizenship, and because  
 12 the amount in controversy exceeds \$75,000, exclusive of interest and costs.

13       13. This Court has personal jurisdiction over AXA because AXA regularly  
 14 conducts and transacts business in this state, including having issued the life  
 15 insurance policies at issue in this state.

16       14. Venue is proper pursuant to 28 U.S.C. §§ 1391(a)(1), (a)(2), and  
 17 1391(b) because AXA resides in this judicial district, and a substantial part of the  
 18 events giving rise to the claims occurred in this judicial district, including AXA's  
 19 issuance of the policies that are the subject of this complaint.

#### **FACTUAL BACKGROUND**

##### **A. Plaintiffs Are the Owners of AUL II Policies**

20       15. Each plaintiff is the owner and beneficiary of a policy that AXA issued  
 21 in the State of California between 2004 and 2006. The Duffy policy is a \$3 million  
 22 policy issued on February 4, 2005. The Toll policy is a \$5 million policy issued on  
 23 February 18, 2006. The relevant terms and conditions of each policy are identical  
 24 to those set forth in the Doe policy attached to the EFG complaint.

25  
 26  
 27  
 28

1       16. As is typical of universal life insurance policies, the AUL II Policies  
2 provide that they will remain in force as long as there are sufficient funds in the  
3 policy account each month to cover the monthly deductions described in the  
4 Policies. The monthly deductions consist of a premium charge, an administrative  
5 charge, and a cost of insurance charge, plus charges for any policy riders. Any  
6 balance in the policy account that is left after the deductions are taken reflects the  
7 “Policy Account Value,” which accrues interest as provided for under the Policies.  
8 If in any month there are insufficient funds in the account to cover the deductions,  
9 the policy will enter a 30-day grace period. If additional premiums are not paid  
10 within the grace period, AXA will terminate, or lapse, the policy.

11        17. The largest and most significant charge under the Policies is the cost of  
12 insurance charge. This charge, also known as the mortality charge, reflects the price  
13 that AXA charges to cover the risk of death. The cost of insurance charge is  
14 determined by multiplying the cost of insurance rate times the net amount at risk.  
15 The net amount at risk is the death benefit minus the Policy Account Value. (The  
16 Policy Account Value is the savings component of a universal life insurance policy.  
17 It is deducted from the death benefit because the policyholder does not pay cost of  
18 insurance on this amount.)

18. The cost of insurance rates under a policy are based initially on certain  
characteristics of the insured, including her or his gender, age, and underwriting  
class (*i.e.*, preferred plus, preferred, standard, and substandard classes). The cost of  
insurance rate increases every year as the insured ages.

23        19. The Policies state that AXA “will determine cost of insurance rates  
24 from time to time” and that any change in the cost of insurance rates will be as  
25 described in the “Changes in Policy Cost Factors” provision. The “Changes in  
26 Policy Cost Factors” provision provides:

27 Changes in policy cost factors (interest rates we credit,  
28 cost of insurance deductions and expense charges) will be  
on a basis that is equitable to all policyholders of a given

class, and will be determined based on reasonable assumptions as to expenses, mortality, policy and contract claims, taxes, investment income, and lapses.

20. Accordingly, under the plain terms of the Policies, any change in the cost of insurance rates (a) can only be based on AXA's reasonable assumptions as to expenses, mortality, policy and contract claims, taxes, investment income, and lapses; and (b) must be "equitable to all policyholders of a given class."

## **B. AXA Raises Cost of Insurance Rates Solely on the Discriminated Group's Policies**

21. In October 2015, AXA began notifying the Discriminated Group that it was raising the cost of insurance rates on their AUL II Policies, including all of the Plaintiff's Policies. These letters stated that AXA was "adjusting your universal life insurance policy in a way that will increase the monthly cost-of-insurance (COI) deductions from your policy and which is likely to require payment of additional premium to help ensure that your policy will perform as previously illustrated." The letters further stated that AXA has "reviewed our mortality and investment income expectations for Athena Universal Life II policies and [has] determined that they are less favorable than was anticipated when the current schedule of COI rates was established."

22. AXA's letters did not tell Plaintiffs how much the rate increase would be or explain how its mortality and investment income assumptions had changed. Nor did it say what policies or policyholders were subject to a rate increase.

23. Plaintiffs later calculated that the cost of insurance rate increase was between 35-65%. In addition, a FAQ that AXA released disclosed that the rate increase was targeted solely at the Discriminated Group, although it did not explain why AXA targeted this group exclusively.

24. AXA's rate increase breaches the terms of the Policies in at least four ways. First, the rate increase is not "equitable to all policyholders of a given class."

1 Second, the rate increase is not “based on reasonable assumptions as to expenses,  
 2 mortality, policy and contract claims, taxes, investment income, and lapses.” Third,  
 3 the rate increase is excessive. Fourth, the rate increase breaches the implied  
 4 covenant of good faith and fair dealing that exists in every insurance contract.

5       **C.     The Rate Increase Is Not Equitable to All Policyholders in a Class**

6       25.    The only “class” referred to in the Policies is the “Rating Class.” In  
 7 the AUL II Product Guide that was attached as Exhibit 4 to the EFG complaint,  
 8 which AXA distributed to its sales force, AXA refers to Rating Classes as  
 9 “Underwriting Classes,” but they appear to refer to the same grouping of policies.

10      26.    The Underwriting Classes are (i) Preferred Plus Non-Tobacco User;  
 11 (ii) Preferred Non-Tobacco User; (iii) Preferred Tobacco User; (iv) Standard Non-  
 12 Tobacco User; (v) Standard Tobacco User; and (vi) Substandard letter rating classes  
 13 C, D, E, and F, Non-Tobacco and Tobacco User. AUL II Product Guide, Exh. 4,  
 14 p. 15. These classes represent a range of mortality risks, with Preferred Plus  
 15 representing the lowest mortality risk to AXA.

16      27.    Issue age and face amount are not characteristics of the Rating or  
 17 Underwriting Class, although only certain issue ages qualify for a particular  
 18 Underwriting Class. For example, Preferred Plus is limited only to issue ages of 18  
 19 to 80, while Preferred is available to anyone from age 0 to 85. Thus, the Preferred  
 20 and Preferred Plus Underwriting Classes consist of policies with issue ages 70 and  
 21 above as well as policies with issue ages 69 and below. These Underwriting Classes  
 22 also consist of policies with face amounts of \$1 million and above as well as  
 23 policies with face amounts of \$999,999 and below.

24      28.    AXA’s rate increase violates the provision that any change in cost of  
 25 insurance rates be equitable to all policyholders within a class because the rate  
 26 increase applies only to some members of an Underwriting Class (those with issue  
 27 ages of 70 and above and face amounts of \$1 million and above) and not to others.  
 28 For example, some members of the Preferred and Preferred Plus rating classes

1 received a cost of insurance rate increase while others did not. The same holds true  
 2 for every other Rating or Underwriting Class.

3       29. There also is no equitable or actuarial basis for singling out policies  
 4 with issue ages of 70 and above and face amounts of \$1 million and above. This is  
 5 particularly true with respect to the alleged adverse changes in AXA's investment  
 6 income expectations. If, as AXA contends, it expects to receive less investment  
 7 income due to lower interest rates, it would expect to receive less investment  
 8 income for all policies regardless of their issue ages or face amounts. Indeed,  
 9 interest rates would have a greater impact on policies with *lower* issue ages, not  
 10 *higher* issue ages, because AXA would expect to realize the shortfall in expected  
 11 investment income over the course of many more years for policies with lower  
 12 issue ages. Thus, not surprisingly, the AUL II Product Guide expressly  
 13 acknowledges that interest rate assumptions have a greater impact on policies  
 14 issued to younger insureds. It states:

15           Note that interest rates credited on a UL policy are *less*  
 16 *important* in the sales illustration on a 75-year-old than  
 17 they are on a 35-year-old since the illustration generally  
 18 shows payments and policy values to age 120, (although  
 19 the focus is often on age 100) and compounding over 85  
 years makes much more of a difference than over 45  
 years. *Thus, there is relatively less interest rate risk on*  
*Athena II at older ages than at younger ages.*

20 AUL II Product Guide, Exh. 4, p. 1 (emphasis added).

21       30. Nor does it appear based on A/E ratios that the AUL II Policies have  
 22 experienced worse mortality for policies with issue ages of 70 and above and face  
 23 amounts of \$1 million and above. The A/E ratio is the actual to expected ratio, and  
 24 reflects an insurance company's actual experience compared to its expected  
 25 experience. Upon information and belief, AXA's A/E mortality ratios for policies  
 26 with issue ages of 70 and above and face amounts of \$1 million and above is *lower*  
 27 *than* the A/E mortality ratios for policies with issue ages of 69 and below and face  
 28 amounts of \$999,999 and less. In other words, upon information and belief, AXA's

1 mortality experience for the Discriminated Group has been more favorable than it  
 2 has been for AXA's other AUL II Policies, which were not subject to the cost of  
 3 insurance rate increase.

4       31. Thus, not only is AXA's rate increase not equitable to all  
 5 policyholders within a given class, the rate increase appears to target a group of  
 6 policies that have been *more favorable to AXA* than those that did not receive a rate  
 7 increase. For this and other reasons, Plaintiffs believe that AXA had other  
 8 undisclosed and improper motives for targeting the Discriminated Group for the  
 9 rate increase.

10      32. Specifically, Plaintiffs are informed and believe, and on that basis  
 11 allege, that AXA identified the Discriminated Group as consisting largely of  
 12 investor policyholders that acquired their AUL II Policies in or through the  
 13 secondary market for life insurance. Such policyholders, like Plaintiffs, have  
 14 generally paid only enough premiums to cover their monthly policy charges and  
 15 chosen not to invest in the AUL II policy account, which has resulted in less  
 16 premium revenue for AXA and lower Policy Account Values. The Policies,  
 17 however, do not permit AXA to raise cost of insurance rates based on Policy  
 18 Account Values or how much policyholders choose to fund their policies. Indeed,  
 19 by penalizing policyholders for exercising their contractual right to fund their  
 20 policies as they choose, AXA has also breached the implied covenant of good faith  
 21 and fair dealing.

22           **D. The Rate Increase Is Not Justified by Changes in Reasonable  
 23 Assumptions as to Mortality and Investment Income**

24      33. The Policies state that AXA may base a change in cost of insurance  
 25 rates only on reasonable assumptions as to expenses, mortality, policy and contract  
 26 claims, taxes, investment income, and lapses. These are the only six assumptions  
 27 that AXA may consider, and its assumptions must be reasonable. Furthermore, to  
 28

1 be based on AXA's reasonable assumptions, the changes in cost of insurance rates  
 2 must correspond with the magnitude of the changes in AXA's assumptions.

3       34. Here, AXA has cited only two assumptions in support of the rate  
 4 increase—mortality and investment income. Neither of these assumptions,  
 5 however, supports AXA's rate increase.

6       **Mortality**

7       35. *First*, as to mortality, it is well known in the life insurance industry  
 8 that over the past decade, mortality has improved, not worsened, and people are  
 9 living much longer than anticipated several years ago when AXA priced the AUL II  
 10 Policies. This is evidenced by the release of several new mortality tables over the  
 11 past two decades reflecting improved mortality that would, if anything, support a  
 12 decrease in cost of insurance rates.

13       36. Specifically, in 2001, the Society of Actuaries' ("SOA") and the  
 14 American Academy of Actuaries ("AAA") produced the 2001 Commissioner's  
 15 Standard Ordinary ("CSO") Table, which revised the previous 1980 CSO Table to  
 16 reflect significant improving mortality, especially at older ages. The maximum cost  
 17 of insurance rates allowed under the AUL II Policies, however, are based on the  
 18 older 1980 CSO Table, not the newer 2001 CSO Table. The SOA also is currently  
 19 investigating an update of the 2001 CSO Table, and a 2015 investigative report by  
 20 the SOA showed significant reductions in insurance company reserves compared to  
 21 the 2001 CSO Table due to mortality improvements since 2001. In addition, in  
 22 2008, just four years after AXA priced the AUL II Policies, the SOA released a  
 23 2008 Valuation Basic Table that reflected significant mortality improvements  
 24 compared to prior tables, especially at older ages. These new mortality tables  
 25 demonstrate that since 2004 when the AUL II Policies were originally priced,  
 26 mortality has improved, not worsened, and this change in mortality would support a  
 27 *decrease*, not increase, in cost of insurance rates.

28

1       37. Plaintiffs also are informed and believe, and on that basis allege, that  
 2 AXA adjusted the cost of insurance rates for universal life insurance at least five  
 3 times between 2004 and 2013, updating its mortality assumptions as needed, and  
 4 AXA never disclosed during this time that it had suffered adverse mortality,  
 5 justifying a change in cost of insurance rates on its in-force AUL II Policies.  
 6 Indeed, upon information and belief, as late as February 25, 2015, AXA represented  
 7 to NYDFS that its current experience for factors underlying any nonguaranteed  
 8 elements, including mortality, was not different from its anticipated experience. Yet  
 9 just seven months later, AXA purported to have discovered adverse mortality  
 10 experience justifying a cost of insurance rate increase of as much as 65%. This is  
 11 simply implausible.

12       **Investment Income**

13       38. ***Second***, as to investment income, AXA likewise represented to  
 14 NYDFS as late as February 25, 2015 that its current experience for factors  
 15 underlying any nonguaranteed elements, including investment income, was not  
 16 different from its anticipated experience, and it is highly implausible that AXA only  
 17 discovered an adverse change in investment income just seven months later when it  
 18 notified the Discriminated Group it was raising their cost of insurance rates.

19       39. In any event, even if lower interest rates have resulted in lower yields  
 20 on AXA's investments, this would not justify a cost of insurance rate increase in  
 21 the range of 35% to 65%, which is the range of the increases that Plaintiffs have  
 22 calculated on the Plaintiff Policies. Interest rates should be a relatively minor factor  
 23 in determining cost of insurance rates, particularly because any shortfall resulting  
 24 from changes in interest rates (a) can be offset by lowering the credited rate on the  
 25 Policies, which is the interest rate that AXA pays on Policy Account Values; and  
 26 (b) can and must be distributed ***equitably*** among all policyholders, as discussed  
 27 above.

28

40. Moreover, to the extent AXA experienced favorable mortality, the impact of such favorable mortality experience should offset any costs associated with lower than expected interest rates.

4        41. In sum, by drastically raising cost of insurance rates only on the  
5 Discriminated Group, AXA seeks to force Plaintiffs and other members of the  
6 Discriminated Group either to (a) pay exorbitant premiums that AXA knows  
7 would no longer justify the ultimate death benefits or (b) lapse or surrender their  
8 policies, thereby forfeiting the premiums they have paid over the last decade plus.  
9 AXA, in turn, will make a huge profit – either through higher premium payments  
10 or by eliminating a large group of policies (through lapses or surrenders) and  
11 keeping the premiums that have been paid to date. Indeed, AXA stated in SEC  
12 filings from 2015 that it expected the cost of insurance rate increases on this  
13 subgroup of AUL II policyholders to result in a \$46 million increase to net  
14 earnings in 2015 alone.

## COUNT I

### **(Breach of Contract – Express)**

17       42. Plaintiffs reallege the allegations contained in paragraphs 1 through  
18 41, inclusive, as if set forth fully herein.

19 ||| 43. Plaintiffs' Policies are binding and enforceable contracts.

20       44. Defendant materially breached Plaintiffs' policies in several respects,  
21 including but not limited to the following:

- 22 a. By increasing the cost of insurance rates on a basis that is not equitable  
23 to all policyholders in a given class and instead specifically targeting  
24 the Discriminatory Group;

25 b. By increasing the cost of insurance rates on a basis other than  
26 “reasonable assumptions as to expenses, mortality, policy and contract  
27 claims, taxes, investment income, and lapses”; and

28 c. By imposing excessive cost of insurance rates.

45. Plaintiffs have performed all of their obligations under the policies, except to the extent that their obligations have been excused by Defendant's conduct as alleged herein.

46. As a direct and proximate cause of Defendant's material breaches of the Policies, Plaintiffs have been damaged as alleged herein in an amount to be proven at trial, but in any event that exceeds \$75,000, exclusive of interest.

## COUNT II

## **(Implied Covenant of Good Faith and Fair Dealing – Contractual & Tortious Breach)**

47. Plaintiffs reallege the allegations contained in paragraphs 1 through 41, inclusive, as if set forth fully herein.

48. Plaintiffs' policies are binding and enforceable contracts.

49. Each of the policies includes an implied covenant that Defendant will act in good faith and deal fairly with Plaintiffs.

50. Defendant materially breached the policies in several respects, including but not limited to the following:

- a. By charging excessive cost of insurance rates, thereby denying Plaintiffs the benefit of its actual policy account values;
  - b. By increasing the cost of insurance rates on policyholders who exercised their contractual right to pay only enough premiums to cover a policy's monthly charges and, in effect, penalizing policyholders for and deterring policyholders from exercising their contractual rights, thereby frustrating their right to one of the essential benefits of their policies;
  - c. By targeting Plaintiffs and the Discriminated Group for the cost of insurance rate increase when there is no reasonable actuarial basis for doing so;

- d. By attempting to force Plaintiffs and other members of the Discriminated Group either to (a) pay exorbitant premiums that AXA knows would no longer justify the ultimate death benefits or (b) lapse or surrender their policies, thereby forfeiting the premiums they have paid to date; and

- e. Failing to provide any meaningful disclosures about the cost of insurance rate increases, including refusing to provide or make available the documents that Defendant contends support its alleged bases for raising the cost of insurance rates.

10       51. Plaintiffs have performed all of their obligations under the policies,  
11 except to the extent that their obligations have been excused by Defendant's  
12 conduct as alleged herein.

13        52. Defendant's breaches were conscious and deliberate acts, which were  
14 designed to and which did unfairly frustrate the agreed common purposes of the  
15 Plaintiffs' policies and which disappointed Plaintiffs' reasonable expectations by  
16 denying Plaintiffs the benefits of the policies.

17       53. As a direct and proximate cause of Defendant's breaches of the  
18 implied covenant of good faith and fair dealing, Plaintiffs have been damaged as  
19 alleged herein in an amount to be proven at trial, but in any event that exceeds  
20 \$75,000, exclusive of interest. Furthermore, AXA's conduct was conscious and  
21 deliberate, and constitutes oppression, fraud, or malice, justifying an award of  
22 punitive damages.

## **COUNT III**

### **(Declaratory Relief)**

25       54. Plaintiffs reallege the allegations contained in paragraphs 1 through  
26 41, inclusive, as if set forth fully herein.

27        55. For reasons including, but not limited to, those stated herein, there  
28 exists an actual dispute and controversy between Plaintiffs and Defendant

1 concerning Plaintiffs' rights and Defendant's obligations under the policies,  
2 including but not limited to how Defendant must implement any change in the cost  
3 of insurance rates and under what circumstances Defendant may change the cost of  
4 insurance rates.

5        Accordingly, Plaintiffs seek a declaration (a) that Defendant's cost of  
6 insurance rate increase is improper under the Policies and that any excess premiums  
7 received must be returned or the policies' account values recalculated according to  
8 the original cost of insurance rates; (b) that Defendant's purported "class" of  
9 policies defined by issue age and face amount are improper classes; and (c) setting  
10 forth the specific guidelines that govern the factual circumstances under which  
11 Defendant can raise the cost of insurance rates.

12        57. Such a declaration will help prevent or limit any future controversies  
13 under the Policies by providing guidance as to when and how Defendant can  
14 change the cost of insurance rates on its in-force AUL II Policies.

## COUNT IV

**(For Violation of Cal. Bus. & Prof. Code § 17200)**

17       58. Plaintiffs reallege the allegations contained in paragraphs 1 through  
18 41, inclusive, as if set forth fully herein.

19       59. California Business & Professions Code section 17200 prohibits "any  
20 unlawful, unfair, or fraudulent business act or practice."

21       60. Defendant has engaged in unlawful, unfair, and fraudulent business  
22 acts and practices, as described in detail herein.

23       61. As a direct and proximate cause of Defendant's unlawful, unfair, and  
24 fraudulent business acts and practices, Plaintiffs have lost money or property in the  
25 form of excess premiums paid to Defendant.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief and judgment as follows:

## On the First Count

1. For compensatory damages in an amount to be determined at trial;
  2. For an award of pre-judgment and post-judgment interest;
  3. For the costs of the suit herein incurred, including reasonable attorneys' fees to the extent permitted by law; and
  4. For such other and further relief as the Court may deem proper.

## On the Second Count

1. For compensatory damages in an amount to be determined at trial;
  2. For punitive damages in an amount to be determined at trial;
  3. For an award of pre-judgment and post-judgment interest;
  4. For the costs of the suit herein incurred, including reasonable attorneys' fees to the extent permitted by law; and
  5. For such other and further relief as the Court may deem proper.

## On the Third Count

1. For a declaration (a) that Defendant's cost of insurance rate increase is improper under the Policies and that any excess premiums received must be returned or the policies' account values recalculated according to the original cost of insurance rates; (b) that Defendant's purported "class" of policies defined by issue age and face amount are improper classes; and (c) setting forth the specific guidelines that govern the factual circumstances under which Defendant can raise the cost of insurance rates;
  2. For the costs of the suit herein incurred, including reasonable attorneys' fees to the extent permitted by law; and
  3. For such other and further relief as the Court may deem proper.

## On the Fourth Count

1. For an order requiring Defendant to return all excess premiums paid on Plaintiffs' policies and prohibiting Defendant from implementing the cost of insurance rate increase;

- 1           2. For the costs of the suit herein incurred, including reasonable  
2 attorneys' fees to the extent permitted by law; and  
3           3. For such other and further relief as the Court may deem proper.

4  
5 Dated: February 7, 2017

Respectfully submitted,

6  
7  
8 ARENT FOX LLP

9  
10 By: /s/ Franjo M. Dolenac  
11 Michael Cryan  
Franjo M. Dolenac

12  
13 Attorneys for Plaintiffs  
14 THE DUFFY 2004 LLC  
15 and THE TULL 2006 LLC

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand trial by jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Dated: February 7, 2017

Respectfully submitted,

AREN'T FOX LLP

By: /s/ Franjo M. Dolenac  
Michael Cryan  
Franjo M. Dolenac

Attorneys for Plaintiffs  
THE DUFFY 2004 LLC  
and THE TULL 2006 LLC